

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LUCIA MAR UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2016040783

ORDER DENYING MOTION TO  
UNEXPEDITE

On April 12, 2016, Parent on Student's behalf filed a due process hearing request (complaint) naming Lucia Mar Unified School District with the Office of Administrative Hearings. On April 19, 2016, based on issues asserted in the complaint, OAH issued a dual scheduling order setting the matter for expedited and non-expedited hearings. On April 22, 2016, Student's attorney filed a motion to unexpedite the matter. District filed a non-opposition to the motion on April 23, 2016.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].)

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations section 300.530 govern the discipline of special education students. (Ed. Code, § 48915.5.) A local educational agency may suspend or expel a student receiving special education services from school as provided by federal law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school

personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

A special education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).) The removal of a special education student from the student's placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a).)

When a district seeks to change a special education child's educational placement for more than 10 days as a result of a violation of a student code of conduct, the district must convene a meeting to determine whether the child's violation was a manifestation of the child's disability. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.530.) This is known as a manifestation determination. (20 U.S.C. § 1415(k)(1)(E).) A manifestation determination must be made by the school district, the parent, and relevant members of the IEP team as determined by the parent and the school district. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1) & (h).) A manifestation determination must be accomplished within 10 school days of the decision to change the student's placement. (*Ibid.*)

A parent of a special education student may appeal a school district's determination that particular conduct resulting in a disciplinary change of placement was not a manifestation of the child's disability. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. 300.532(a) & (c).) The hearing must be conducted within 20 school days of the date the appeal is filed and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2).) A hearing officer may order a school district to return a child to the placement from which the child was removed, order a change of placement to an interim alternative educational placement for not more than 45 days, or other appropriate equitable relief. ((20 U.S.C. § 1415(k)(3)(B); *Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.)

## DISCUSSION AND ORDER

Student's complaint identifies two main issues, each with multiple subparts. Student alleges in Issue One that District denied Student a free appropriate public education in the 2014-2015 school year and through extended school year. Issue One does not assert any facts that District made a disciplinary change of placement giving rise to a duty to hold a manifestation determination.

Issue Two pertains to the 2015-2016 school year. Subparts 2(a) and 2(b) allege District denied Student a FAPE by a) unilaterally changing Student's placement, and b) failing to convene a manifestation determination review. Student asserts that District sent Student home from school early during August and September 2015 on 21 occasions,

resulting in a unilateral change of placement. Student also asserts District failed to convene a manifestation determination review meeting and failed to conduct a functional behavioral assessment as a result of the behaviors, which he asserts was a procedural violation of the IDEA resulting in a denial of FAPE.

As discussed above, OAH is required under the IDEA title 20 United States Code section 1415(k)(4)(B) to set a matter for expedited hearing where a party is appealing a District's failure to hold a manifestation review meeting before causing a disciplinary change of placement for more than 10 days. Here, Student's complaint makes exactly that assertion in Issue Two, subparts 2(a) and 2(b). Those two issues are effectively appealing District's failure to hold a manifestation determination, which falls directly under section 1415(k).

Student's motion is not supported by authenticated facts, a declaration under oath, or sufficient legal authority. District's non-opposition is equally minimalistic. Neither party has addressed the substantive aspects of the statute sufficiently to support reclassifying the issues as non-expedited.

Student's motion is denied without prejudice. If Student chooses to renew his motion at the expedited prehearing conference, Student must be prepared to acknowledge on the record that Student is 1) waiving any and all claims arising out of title 20 United States Code section 1415(k), and 2) waiving any remedies available under section 1415(k)(3)(B) as a result of District's failure to hold a manifestation determination review before initiating a disciplinary change of placement. The expedited hearing dates are confirmed.

IT IS SO ORDERED.

DATE: April 28, 2016

DocuSigned by:  
*Adrienne L. Krikorian*  
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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings